

REMARKS

The Applicant has filed the present Response in reply to the outstanding Official Action of August 15, 2004, and the Applicant believes the Response to be fully responsive to the Official Action for reasons set forth below in greater detail.

At the onset, Applicant would like to thank the Examiner for indicating that Claims 1-10 are allowed and that Claims 11-22 have allowable subject matter and would be allowable if rewritten in an independent form including all of the limitations of the base claim and any intervening claims.

In the outstanding Official Action, the Examiner objected to Claims 1 and 11 because of several minor informalities. Accordingly, Claims 1 and 11 have been amended to obviate the objection. The amendments were minor editorial corrections. However, Applicant respectfully disagrees with the Examiner that the phrase "a proportion" should be changed to "the proportion". The change will result in an antecedent basis problem.

The Examiner also rejected Claims 11 and 23 under 35 U.S.C. § 102(e) as being anticipated by Rhoads et al. U.S. Patent No. 6,229,924 (hereinafter "Rhoads"). Applicant respectfully disagrees with the Examiner's rejection and traverses the rejection with at least the following analysis.

Regarding Claim 11, Rhoads fails to teach or suggest "a counter which counts a number NA of times selection is made in said selection circuit and number N3 of times the third data is selected".

Insofar as rejections pursuant to 35 U.S.C. § 102(e) are concerned, it is axiomatic that anticipation pursuant to §102 requires that the prior art reference disclose each

and every element of the claim to which it is applied. In re King, 801 F.2d 1324, 1326 (Fed. Cir. 1986). Thus, there must be no differences between the subject matter of the claim and the disclosure of the applied prior art reference. Stated another way, the prior art reference must contain within its four corners adequate direction to practice the invention as claimed. A corollary to the aforementioned rule, which is equally applicable, states that the absence from the applied prior art reference of any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 1571 (Fed. Cir. 1986).

The Examiner asserts that Rhoads counts a quantity. Rhoads describes at column 5, line 40, that “the systems maintains a cumulative count of the amount that the coefficients have been changed to at point in time”. However, what is counted by Rhoad’s invention is an amount of change, in stark contrast, the claimed invention counts the number of times a third data is **selected**. Rhoads and the claimed invention therefore count a different value and thus Rhoads fails to teach each and every element of the claim.

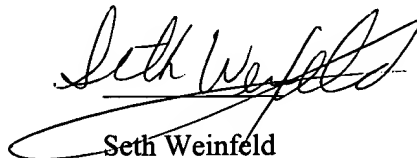
Regarding Claim 23, Rhoads fails to teach the claimed selection process. The Examiner asserts that Rhoads discloses comparing the data length of the third data and the data length of the first data and selecting the third data in a case where the data length of the third data coincides with the data length of the first data. While the invention disclosed in Rhoads does compare a changed coefficient with an unchanged coefficient, the comparison is not used for making positive changes beyond a pre-established positive limit. “If at any time, the cumulative change count exceeds a pre-established positive limit, no further positive changes are made”. See Col. 5, line 40-47. In contrast, according to the claimed invention, the data lengths of the third and first data are compared so that either of the third data or the first data may be selected. The function of the comparison and the manner in which the comparison are used is substantially different in the claimed invention from Rhoads. Accordingly, Rhoads fails to teach or suggest every element of the claim.

Lastly, Applicant would like to note that Claims 24-27 have been added for examination. New Claims 24-27 are method claims that correspond to Claim 11. Applicant respectfully submits that Claims 24-27 are patentably distinct from Rhoads for at least the same reasoning as stated above regarding Claim 11.

For all the foregoing reasons, the Applicant respectfully requests the Examiner to withdraw the rejections of independent Claims 11 and 23 pursuant to 35 U.S.C. § 102(e). Furthermore, Applicant respectfully requests the Examiner to withdraw his objection of Claims 1 and 11.

In conclusion, the Applicant believes that the above-identified application is in condition for allowance and henceforth respectfully solicits the Examiner to allow the application. If the Examiner believes a telephone conference might expedite the allowance of this application, the Applicant respectfully requests that the Examiner call the undersigned, Applicant's attorney, at the following telephone number: (516) 742-4343.

Respectfully submitted,



Seth Weinfeld

Registration No: 50,929

SCULLY, SCOTT, MURPHY & PRESSER

400 Garden City Plaza

Garden City, New York 11530

516-742-4343

SMW:nf